of the Will when considering the approval of any scheme which is submitted to him and the desirability or otherwise of having further facts placed before him in relation to any proposed scheme. The costs of all parties will come out of the Valibhoy Charitable Trust funds.

Order accordingly.

Solicitors: *Murphy & Dunbar; Donaldson & Burkinshaw.*

M. VELAYUTHAM v. THE PORT OF SINGAPORE AUTHORITY

[O.C.J. (Chua J.) February 14, 1975]
[Singapore — Suit No. 609 of 1970]

Employment — Misconduct — Dismissal for misconduct — Employee previously charged for theft, and was acquitted by court — Whether "due inquiry" had been held — Whether chairman/general manager and the senior staff were empowered to dismiss — Employment Act (Cap. 122), s. 14(1) — Port of Singapore Authority Act (Cap. 173), s. 36(4) and Para. 14(2) of the First Schedule.

The plaintiff was employed as a senior leading checker at the P.S.A. Godowns. As a result of investigations made by the P.S.A. police arising from the report of loss of 83 cartons of brandy, the plaintiff was arrested and subsequently charged on April 17, 1968 in the District Court. On the same day, he was interdicted from service and put on half pay. On June 20, 1969 he was acquitted and discharged by the District Court without his defence being called. After the acquittal of the plaintiff the matter was considered by the P.S.A. and it was decided to dismiss the plaintiff for misconduct. The plaintiff was not asked to appear but on September 10, 1969 he received a letter from the Personnel Officer of the P.S.A. informing him that he was dismissed from service forthwith for misconduct. The plaintiff denied that he was guilty of any misconduct and said that he was not aware of what was the misconduct alleged against him. Counsel for the plaintiff contended that there had been no "due inquiry" as required by section 14(1) of the Employment Act (Cap. 122). He further referred to section 36(4) of the Port of Singapore Authority Act (Cap. 173) and submitted that the plaintiff was not dismissed by the Authority but by the Chairman/General Manager and the plaintiff's dismissal was therefore wrongful.

Held, dismissing the plaintiff's claim: (1) on the facts of this case there had been "due inquiry" within the meaning of section 14(1) of the Employment Act;

(2) the contention raised by counsel for the plaintiff that the plaintiff's dismissal was wrongful in that he was not dismissed by the Authority but by the Chairman/General Manager and the Senior Staff was not pleaded by the plaintiff and there was no strong justification for an amendment of the pleadings at the late stage;

(3) in any event there was provision in the Port of Singapore Authority Act for the Authority to delegate to any employee of the Authority their power to dismiss.

CIVIL SUIT.

J. B. Jeyaretnam for the plaintiff.

P. Selvadurai for the defendant.

Chua J.: The plaintiff was employed by the Port of Singapore Authority the defendant (hereinafter referred to as "the P.S.A.") as Senior Loading Checker at the P.S.A. Godowns and he was dismissed by the P.S.A. on September 10, 1969. He now claims against the P.S.A. for damages for wrongful dismissal and for arrears of salary.

The plaintiff's case is shortly this. He joined the P.S.A. in December 1947. It was then known as the Singapore Harbour Board. His first job was that of a tally clerk. In April 1968, he was holding the post of Senior Loading Checker and his salary was $470, basic pay, plus $94 cost of living allowance, making a total of $564 p.m. On April 17, 1968, he was charged in the District Court with the theft of 83 cartons of brandy from P.S.A. Godown 46. He claimed to be tried. On the same day he was interdicted from service and put on half pay. On June 20, 1969, he was acquitted and discharged by the District Court without his defence being called. He reported for work the next day but he was told to wait. His solicitors then wrote to the P.S.A. on June 30 requesting that he be re-instated. He was not re-instated and several reminders were sent to the P.S.A. by his solicitors. In the meantime he continued to draw half-month's salary. On September 10, 1969, he received a letter from the Personnel Officer of the P.S.A. informing him that he was dismissed from service forthwith for misconduct. He then commenced the present proceedings. He denies that he is guilty of any misconduct, in fact, he says, he does not know what was the misconduct alleged against him.

The P.S.A.'s case is that the plaintiff was rightly dismissed without notice for misconduct. They say that the plaintiff was involved in the theft of 83 cartons of brandy from P.S.A. Godown 46 on March 26, 1968. To substantiate their allegations they called a number of witnesses. The main witness was Giauw Yen Seng. The following story emerged from their evidence.

Giauw was working as a tally clerk on board a ship in 1947 or 1948 and in the course of his work at the P.S.A. Godowns he met the plaintiff. Giauw ceased to be a tally clerk in 1957.

Sometime in 1968 Giauw met the plaintiff by chance at a coffee stall. The plaintiff revealed to Giauw a plan to steal goods from the P.S.A. Godown by using a specially constructed wooden box which was to be brought into the Godown and there filled with goods and later taken out of the port. The plaintiff asked Giauw to have the wooden box constructed and to get a buyer for the goods. Giauw said that he had no money and the plaintiff asked him to borrow some.

Giauw took the plaintiff to see his friend Thon Nyuk Chiang. The plaintiff brought with him a model of the wooden box that was to be constructed. They then went to a carpenter in Pagoda Street to have a proper model made. A few days later the three of them went back to Pagoda Street and collected the model for which Thon paid the carpenter $5. The plaintiff then took Giauw and Thon to a place at Bukit Timah Road where the wooden box was to be constructed. There the plaintiff introduced them to his friend Ganapathy. Thon then agreed to lend the money for the construction of the wooden box.

A few days later the plaintiff, Giauw and Thon went to fetch the carpenter and they all went to a timber yard and purchased some timber for which Thon paid. The plaintiff and the carpenter then brought the timber to Ganapathy's place at Bukit

Timah. The wooden box was constructed there and the plaintiff went there everyday to watch the wooden box being constructed.

After the wooden box had been constructed, the plaintiff instructed Giauw to arrange for the wooden box to be sent to Australia. Giauw went to the South Baggage Transport Agency in Market Street on March 18, 1968, where arrangements were made to export by ship to Freemantle, Australia, the wooden box, said to contain household effects, to a Dr. J. Peter Chong. Giauw gave instruction that the wooden box was to be collected from the Chong Association in Aliwal Street.

Giauw hired a lorry and went to Ganapathy's place where the plaintiff was waiting. Thon was already there with a crane. The wooden box was hoisted by the crane on to the lorry and Giauw brought the wooden box to Aliwal Street followed by Thon with the crane. There the wooden box was brought down from the lorry and left in front of the Chong Association. Thon paid the lorry driver and the crane driver.

In due course the South Baggage Transport Agency collected the wooden box from Aliwal Street and brought it to P.S.A. Godown 46 on March 20, 1968, where it was stored awaiting shipment by the "Astrid Bakke". The bill of the South Baggage Transport Agency was paid by Thon. The size of the wooden box was 8 ft. x 6 ft. x 5 ft.

A few days later the plaintiff told Giauw that there were some Chinese cigarettes that could be taken from the Godown and asked him to inquire if the buyer was interested. The buyer one Kong Sen was not interested.

The motor vessel "Cambodge" arrived at P.S.A. Godown 46 sometime in March 1968, and she discharged a lot of 359 cartons of brandy into P.S.A. Godown 46. The plaintiff then told Giauw about the brandy and Giauw found out that the buyer was interested.

The plaintiff then told Giauw to instruct the South Baggage & Transport Agency to cancel the shipment of the wooden box as Dr. Peter Chong's mother was ill and to take the wooden box out of the port.

The South Baggage & Transport Agency duly took the wooden box out of the port on March 26, 1968, and brought it to an address in Meyappa Chettiar Road which Giauw gave them. It was the address of Kong Sen. A Chinese took delivery of the wooden box and paid the bill of the South Baggage & Transport Agency. When Giauw spoke to Kong Sen later he was told that the wooden box contained 79 cartons of brandy.

About April 2, 1968, the Assistant Storekeeper in P.S.A. Godown 46 made a physical check of the brandy and found that 83 cartons were missing and the matter was reported to the P.S.A. Police on April 3.

In the meanwhile Kong Sen found difficulty in selling the stolen brandy and he gave Giauw sums of money from time to time as and when the brandy was sold. As sale was slow Giauw himself helped to sell the brandy. From time to time Giauw handed the proceeds of sale of the brandy to the plaintiff retaining some for himself and Thon.

The P.S.A. Police made immediate investigations. Giauw was questioned and subsequently the plaintiff was arrested. On April 17, 1968, the plaintiff was charged with the theft of 83 cartons of brandy. The plaintiff was interdicted from service on the same day and put on half pay.

At the trial of the plaintiff, after fifteen witnesses had been called by the prosecution, the prosecution on June 20, 1969, applied for an adjournment on the ground that a police officer, who had recorded a statement from a witness and who they wished to call to give evidence, was away in India. The application for adjournment was opposed by counsel for the plaintiff and the court refused the application, whereupon the prosecution said that they could not proceed further with the case and the District Judge then acquitted the plaintiff.

So much for the evidence adduced by the defendant.

The plaintiff does not deny that he knew of the construction of the special wooden box with a self-locking lock inside and in fact he admitted that he was the one who arranged for the wooden box to be constructed at Ganapathy's place at Bukit Timah and that he had watched the construction of the wooden box. He admitted also that he was present when the wooden box was removed from Bukit Timah. But his story is that it was Giauw who brought the model of the wooden box to him and asked him to find a carpenter to construct the wooden box saying that the wooden box was required by his uncle who was going to Australia; that it was Giauw who asked him to find a place where the wooden box was when it was removed by Giauw from Bukit Timah; that Giauw told him that it was to be taken to his uncle's house; that sometime later he met Giauw who told him that his uncle had left for Australia. The plaintiff denied that he was implicated in the theft of the brandy from P.S.A. Godown 46.

It is improbable that Giauw would ask the plaintiff, who is an Indian, to look for a Chinese carpenter to construct the wooden box; Giauw could easily have got the Chinese carpenter himself. If it was not the plaintiff who wanted the wooden box to be specially constructed why should he be present to watch it being constructed and why should he be present when the wooden box was taken away from Bukit Timah? The evidence is that the plaintiff took leave between February 19 and 22, 1968, and again from February 27 to 29, 1968, and on March 1, 1968, and finally on April 2 and 3, 1968. The plaintiff admitted that he went to watch the construction of the wooden box during the time that he was on leave but he said that he did not take leave especially to do that. His story is that he took leave because his mother was ill in Johore and he wanted to go there to look after her but he was later told by his brother that his mother had recovered so he did not go to Johore and finding free time on his hand he went to Bukit Timah on three days to watch the carpenter constructing the wooden box. This is an unlikely story. I have no doubt that he took leave in order to go to Bukit Timah

to see that the wooden box was being constructed to his requirements. He must have also taken leave when the wooden box was removed from Bukit Timah. He certainly was very much interested in the construction of the wooden box.

The plaintiff had been working in the P.S.A. Godowns for many years and he knew the ins and outs of the Godowns. The plaintiff also knew of the arrival of the "Cambodge" and that the brandy from that vessel was stored in Godown 46.

After considering the whole of the evidence I am convinced that Giauw was speaking the truth and I accept his evidence. I have no doubt that the theft of the brandy from P.S.A. Godown 46 was conceived and planned by the plaintiff and that the brandy was taken out of P.S.A. Godown 46 in the specially constructed wooden box.

The law is clear that on the facts of this case the defendant was entitled to dismiss the plaintiff from their service without notice.

That however is not the end of the matter. Counsel for the plaintiff pointed out that under section 14(1) of the Employment Act (Cap. 122) an employer may dismiss without notice an employee on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service only after "due inquiry". He submitted that in the present case there had been no "due inquiry" and that the plaintiff was wrongfully dismissed.

Now, the evidence is that the theft of the brandy was reported to the P.S.A. Police and investigations were carried out by the P.S.A. Police. Witnesses, including the plaintiff, were examined and their statements were recorded. The plaintiff was then charged by the P.S.A. Police with the theft of the brandy and a caution was administered. The plaintiff then made a statement in which he said:

"I am innocent. I did assist in making the case with the hope of making some extra money without realising his motive i.e. Giap (Giauw)."

Before the trial of the plaintiff in the District Court the P.S.A. Police on April 15, 1968, reported the result of their investigations to the Chairman of the P.S.A. who was also the General Manager. The statements of witnesses including the plaintiff's statements were forwarded to the Chairman/General Manager.

After the plaintiff's acquittal by the District Court, the P.S.A. Police reported on June 21, 1969, to the Chairman/General Manager setting out the circumstances under which the plaintiff was acquitted.

A meeting was then held on July 3, 1969, presided by the Chairman/General Manager. There were present at this meeting the following officers of the P.S.A. — Director — Administration, Director — Operations, Staff Manager, Acting Traffic Manager and the Acting Secretary. The meeting was held to discuss the request of the plaintiff to be re-instated to his post of Senior Loading Checker. Before the meeting were the report of the P.S.A. Police dated April 15, 1968, and the statements of witnesses taken by the P.S.A. Police and the report of the P.S.A. Police dated June 21, 1969. The Chairman/General Manager said that, irrespective of the decision of the District Court, it was necessary to consider dismissing the plaintiff and two other employees who were involved as their conduct was prejudicial to the P.S.A.'s interest and the security of goods in the Port. For this purpose the Staff Manager was directed to write to the P.S.A.'s legal advisers for their opinion and to get their confirmation that in dismissing them there was no need to pay them pension and gratuity as they could not be said to have served the P.S.A. with diligence and fidelity as required in regulation 7 of the Pension Scheme.

The legal advisers confirmed that there were sufficient grounds to dismiss the three employees without payment of pension and gratuity and the Chairman/General Manager was duly informed. The Staff Manager then took action on September 9, 1969, to have the plaintiff dismissed and on September 10, 1969, the Acting Personnel Officer wrote to the plaintiff informing him that he was dismissed forthwith for misconduct.

As I have said counsel for the plaintiff submitted that "due inquiry" as required by section 14(1) had not been held. His contention is that the Chairman/General Manager and the Senior Staff did not have before them at the meeting the relevant materials on which they could reach a decision to dismiss the plaintiff and furthermore the plaintiff should have been asked to appear before the meeting and be afforded the opportunity of being heard in his own defence.

The question before me is: was "due inquiry" made in the present case.

In the present case full investigations had been made by the P.S.A. Police and the results of their investigations together with all relevant documents were before the meeting of July 3, 1972. There were sufficient material before the Chairman/General Manager and the Senior Staff to enable them to make a decision to dismiss the plaintiff for misconduct inconsistent with the fulfilment of the express or implied conditions of his service. In my view it was not necessary in this case that the plaintiff should be asked to appear before the meeting and be heard in his own defence. The plaintiff was at all times well aware of the nature of the accusations against him. I am of the view that on the facts of this case there had been "due inquiry" within the meaning of section 14(1) of the Employment Act.

Another point taken by counsel for the plaintiff is that the Chairman/General Manager and the Senior Staff were not empowered to dismiss the plaintiff. Counsel for the plaintiff after the close of the defendant's case and after the closing address of counsel for the defendant pointed out that by section 36(4) of the Port of Singapore Authority Act (Cap. 173) "the termination of appointment, dismissal and disciplinary control of the employees of the Authority shall be vested in the Authority". Counsel submitted that on the evidence the plaintiff was not dismissed by the Authority but by the Chairman/General Manager and the Senior Staff and the plaintiff's dismissal was therefore wrongful. This point was not pleaded by the plaintiff. Counsel for the plaintiff said that the point was not pleaded because he came to know that it was

not the Authority that made the decision to dismiss the plaintiff only at the hearing when he was cross-examining the Deputy Director, Staff & Training. In any case he submitted this point need not be pleaded as the plaintiff had already pleaded that he was wrongfully dismissed, but if the court was of the view that it should have been pleaded then he asked for leave to amend the plaintiff's pleadings.

I was of the view that this point should have been pleaded and that the plaintiff should not at this late stage be allowed to amend his pleadings as there was no strong justification for doing so. The plaintiff could easily have ascertained well before the trial whether the decision to dismiss him was made by the Authority. In any case the application for leave to amend the pleadings should have been made after it came out in evidence that the decision to dismiss was not made by the Authority. There has been ample opportunity for the plaintiff to make his application well before the close of the defendant's case.

In passing I may add that there is provision in the Port of Singapore Authority Act for the Authority to delegate to any employee of the Authority their power to dismiss (paragraph 14(2) of the First Schedule).

For these reasons the plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *J. B. Jeyaretnam & Co.; Rodyk & Davidson.*

HOLIDAY INNS INC. & ANOR. v. HOTEL ENTERPRISES, LTD.

[O.C.J. (Chua J.) April 4, 1975]

[Singapore — Motion in Suit No. 3615 of 1974]

Practice and Procedure — Injunction — Interim application — Application for injunction to restrain defendants from terminating agreement — Principles on which court acts in granting or withholding interlocutory relief — Preservation of status quo taken into consideration.

The plaintiffs and the defendants entered into an agreement whereby the first plaintiffs were to manage a hotel. The benefit of the said management agreement was subsequently assigned to the second plaintiffs, a wholly owned subsidiary of the first plaintiffs. The defendants were dissatisfied with the management of the hotel and sought to terminate the agreement. There were some exchanges of correspondence between the defendants and the first plaintiffs over the said management resulting in the defendants giving the first plaintiffs a "grace period" of 1 month to wind up the first plaintiffs' operation. On expiry of the said period, the defendants took over the management and removed the first plaintiffs' signs.

In a previous action brought by the plaintiffs, the court ordered an interim injunction restraining the defendant from interfering with the second plaintiffs in the performance of their duties under the management agreement.

The plaintiffs applied for an order, *inter alia*, that the court allow the continuance of the said injunction against the defendants.

Held: (1) in an application for the interlocutory injunction the applicants must establish a probability or a strong *prima facie* case that they are entitled to the right whose violations they complain and, subject to this being established, the governing consideration is the maintenance of the status quo pending the trial;

(2) the management agreement in this case was not a contract of service nor was it a contract involving personal service. It was an agreement which the court could specifically enforce;

(3) having regard to the nature and scope of the management agreement, damages would be an inadequate remedy and the balance of convenience was clearly in favour of the plaintiffs;

(4) in the circumstances the balance of justice was in favour of restraining the defendants pending the trial preventing the plaintiffs from managing and operating the hotel under the management agreement.

Cases referred to:-

(1) *Jones* v. *Pacaya Rubber & Produce Co. Ltd.* [1911] 1 K.B. 455.

(2) *Harman Pictures N.V.* v. *Osborne & Ors.* [1967] 2 All E.R. 324.

(3) *Donmar Productions Ltd.* v. *Burt & Ors.* [1967] 2 All E.R. 338.

MOTION IN SUIT.

A. C. Fergusson for the plaintiffs.

R. K. Booker (*Michael Hwang* with him) for the defendant.

Chua J.: The first plaintiff is a company incorporated in the State of Tennessee, United States of America, and carries on business as the owner or operator of a worldwide chain of hotels each of them is named a "Holiday Inn". The second plaintiff is a company incorporated in the State of Tennessee, United States of America, and is a wholly owned subsidiary of the first plaintiff and has a registered office in Singapore.

The defendant is a public company incorporated in Singapore and all the corporate shareholders are members of the "Goodwood Group" whose assets include a chain of hotels in Singapore.

On September 1, 1971, the first plaintiff and the defendant entered into an agreement (hereinafter called "the Management Agreement"), whereby the first plaintiff is to manage a hotel which was then under construction by the defendant at Scotts Road, Singapore.

The hotel was opened on March 22, 1974, as a Holiday Inn but the parties agreed that April 1, 1974, would be the opening date for the purpose of the Management Agreement.

The benefit of the Management Agreement was assigned by the first plaintiff to the second plaintiff by an assignment dated October 31, 1974, with effect from December 28, 1973.

In May 1974, the defendant approached the first plaintiff for a reduction of the first plaintiff's management fees as provided for in the Management Agreement. Discussions took place between the representatives of the defendant and the first plaintiff with regard to the reduction in the management fees. In September 1974, the first plaintiff made an offer to reduce the management fees but that offer was not accepted by the defendant.

From October 28, 1974, to November 11, 1974, the defendant wrote many letters to the first defendant and to the Innkeeper, Mr. J.P. Pennells, alleging fraudulent management and breaches of the Management Agreement by the first plaintiff, and expressing dissatisfaction with (1) the day to day operation of the